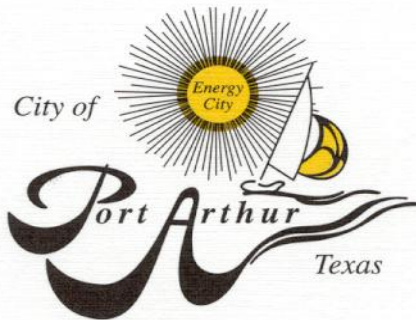


DELORIS "BOBBIE" PRINCE, MAYOR
DERRICK FREEMAN, MAYOR PRO TEM

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CITY MANAGER

SHERRI BELLARD, TRMC
CITY SECRETARY

VAL TIZENO
CITY ATTORNEY

APRIL 16, 2015

**INVITATION TO BID
PURCHASE OF TWO (2) PARATRANSIT BUSES FOR TRANSIT**

DEADLINE: Sealed Bid submittals must be received and time stamped by **3:00 p.m., Central Standard Time, Wednesday, May 6, 2015.** (The clock located in the City Secretary's office will be the official time.) All bids received will be read aloud **at 3:15 p.m. on Wednesday, May 6, 2015** in the City Council Chambers, City Hall, 5th Floor, Port Arthur, TX. You are invited to attend.

MARK ENVELOPE: *P15-045*

DELIVERY ADDRESS: Please submit one (1) original and one (1) copy of your bid to:

CITY OF PORT ARTHUR
CITY SECRETARY
P.O. BOX 1089
PORT ARTHUR, TEXAS 77641

or

CITY OF PORT ARTHUR
CITY SECRETARY
444 4TH STREET, 4th Floor
PORT ARTHUR, TEXAS 77640

POINTS OF CONTACT:

Questions concerning the **Invitation to Bid** or **Scope of Work** should be directed **in writing** to:

City of Port Arthur, TX
Clifton Williams, Senior Purchasing Assistant
P.O. Box 1089
Port Arthur, TX 77641
clifton.williams@portarthurtx.gov

Please submit questions in writing or the Approved Equals form to the email above on or before Wednesday, April 29, 2015 at 10:00 a.m.

The enclosed Invitation to Bid (ITB) and accompanying General Instructions, Conditions and Specifications are for your convenience in submitting bids for the enclosed referenced services for the City of Port Arthur.

Bids must be signed by a person having authority to bind the firm in a contract. Bids shall be placed in a sealed envelope, with the Vendor's name and address in the upper left-hand corner of the envelope.

ALL BIDS MUST BE RECEIVED IN THE CITY SECRETARY'S OFFICE BEFORE OPENING DATE AND TIME. It is the sole responsibility of the firm to ensure that the sealed ITB submittal arrives at the above location by specified deadline regardless of delivery method chosen by the firm. Faxed or electronically transmitted ITB submittals will not be accepted.

Shawna Tubbs, CPPO, CPPB
Purchasing Manager

**INVITATION TO BID
PURCHASE OF TWO (2) PARATRANSIT BUSES FOR TRANSIT**

(To be Completed ONLY IF YOU DO NOT BID)

FAILURE TO RESPOND TO BID SOLICITATIONS FOR TWO (2) BID PERIODS MAY RESULT IN REMOVAL FROM THE VENDOR'S LIST. However, if you are removed you will be reinstated upon request.

In the event you desire not to submit a bid, we would appreciate your response regarding the reason(s). Your assistance in completing and returning this form in an envelope marked with the enclosed bid would be appreciated.

NO BID is submitted: ____ this time only ____ not this commodity/service only

	Yes	No
Does your company provide this product or services?		
Were the specifications clear?		
Were the specifications too restrictive?		
Does the City pay its bills on time?		
Do you desire to remain on the bid list for this product or service?		
Does your present work load permit additional work?		
Comments/Other Suggestions:		

Company Name:	
Person Completing Form:	Telephone:
Mailing Address:	Email:
City, State, Zip Code:	Date:

CITY OF PORT ARTHUR
PURCHASE PARATRANSIT BUS FOR TRANSIT
REQUEST FOR APPROVED EQUAL FORM

This form must be used to request approval of items equal to items specified with a brand name and must be submitted to no later than April 29, 2015 at 10:00 a.m. Make additional copies as necessary.

OFFEROR'S NAME:					
LINE/ ITEM #	BID PAGE #	BRAND NAME	BRAND NUMBER/ PRODUCT CODE	APPROVED	DENIED
Signed: _____ Date: _____					

SPECIFICATIONS FOR PURCHASE OF TWO (2) PARATRANSIT BUSES FOR TRANSIT

Below are the specifications for two Paratransit Buses. The brands listed are just standards approved by Transit, the City welcomes any exceptions that can meet the quality of the products stated in this specification. Vendors that have exceptions to the specifications, please submit the Exceptions form by the date stated at the bottom of Page 1. Purchasing will issue an addendum stating any of the exceptions accepted.

1) Scope

These specifications define requirements for medium-duty, low-floor paratransit buses. Buses shall have a minimum expected life of seven (7) years or 200,000 miles, and are intended for the widest possible spectrum of passengers, including children, adults, the elderly and people with disabilities.

2) Legal Requirements

The Contractor shall comply with all applicable federal and state regulations. These shall include but not be limited to ADA, as well as state safety requirements. Buses shall meet all applicable FMVSS regulations in effect at the date of manufacture. The current Federal Clauses shall be adhered to with focus on the “buy American “ section in pursuant of 49 CFR661.12 and 49 USC A 5323. Please read and email questions if in doubt.

3) Chassis

A Cutaway chassis with a GVWR of 14,500 pounds must include the following:

- a) 5,000 pound maximum front GAWR Twin I-Beam IFS; 9,600 pound maximum Dana Full Floating Rear Axle
- b) Engine shall have a diesel fuel system
- c) 5-speed automatic transmission
- d) Brake system to be power, self adjusting, four wheel disc with four wheel anti-lock
- e) Fuel tank will have maximum capacity available for the low floor chassis configuration .
- f) Exhaust system to be OEM stainless steel exhaust pipes and muffler properly installed with heat shield and baffles.
- g) 225 amp single alternator.
- h) Dual batteries rated at 650 CCA each.
- i) LT225/75Rx16E tires with 16.0x6, white steel wheels, with Steel Dually Wheel Simulators and one spare.
- j) Shall come with a total of four (4) sets of all keys.

4) Engine Fast Idle

The engine shall be equipped with fast idle control which includes manual and automatic control features. Fast idle shall not activate unless parking brake is set and transmission control is in neutral (N) or park (P). The control system shall have a manual switch, volt sensor, an indicator light, and activate automatically from voltage sensors. The system shall automatically deactivate when bus is shifted into gear and when the bus foundation brakes are applied. Suggested source: Advanced Fast Idle System II (AFIS II) by Intermotive Products.

5) **Low floor modifications**

- a) All modifications and/or industry standard wheelbase extensions to the OEM frame rail shall only be made aft OEM chassis cab “B” pillar.
- b) The chassis frame shall consist of an Equal-Access™ passenger side frame rail extension section engineered by Dallas Smith Corp. (patents pending), and shall be installed by a select recognized Qualified Vehicle Modifier or Specialty Vehicle Manufacturer.
- c) No modifications shall be made to the OEM drive train (i.e. engine, transmission), OEM drive train mounts, and/or OEM drive train specified component positioning.
- d) The bus must incorporate an IntelliSYNC® (*Or approved equal*) 4-point air-ride suspension system. *The system* must have both full and passenger side vehicle kneel functionality. Full vehicle (4-point) flow controlled kneeling must be completed within eight (8) seconds. The air system lines, fittings, valves, connectors and tanks to be color-coded for plug n’ play operation and must meet D.O.T. specifications. Bus must have system safety control valves and integrated interlock safety system. The vehicle suspension must be rated to provide and perform up to 500 full vehicle kneel cycles within a 24-hour period of continuous use, for 365 days a calendar year.

6) **Suspension**

- a) The suspension shall be a DSC IntelliSYNC® air-ride/wide-trac™ suspension system, Ford E450 model, produced by Parker Hannifin.
- b) Shall include Automatic Vehicle Leveling System with true flat floor entry landing area.
- c) Must incorporate a mid-vehicle step up to rear flat seating area, with optional fixed ramp to rear or optional automatic ramp to rear.
- d) Suspension system shall be “Buy America” certified.
- e) The IntelliSYNC® air-ride suspension system, Ford E450 model 2014MY shall provide a limited standard warranty, for a period of 36 months or 36,000 miles (whichever shall occur first).
- f) The vehicle shall retain all four (4) OEM 1.38” HD Gas-Type, front and rear Shock Absorbers.
- g) Vehicle suspension air system shall be an IntelliSYNC® York 210 High Duty Cycle Compressor (DC powered), located aft-cab, on driver side frame rail, utilizing specific isolator compressor mounts and brackets.
- h) Vehicle suspension air system shall incorporate an IntelliSYNC® in-line “air-cooler” to reduce operating air system temperature approximately 150° or less, to improve overall air system efficiency and suspension durability.
- i) Vehicle suspension air system shall incorporate an automatic heated regenerating in-line dryer/filter, with dedicated purge tank.
- j) All suspension air system lines, fittings, valves, connectors and tanks shall meet D.O.T. specifications.
- k) Front vehicle springs shall consist of (2) 5,000 (lbs.) maximum combined capacity, double convoluted air springs by Firestone® utilizing OEM brackets to mount.
- l) Front vehicle strut bushings shall be DSC LoPro™ Extenda-Life™ Heavy Duty Unlimited Travel Bushings.
- m) Rear suspension shall consist of IntelliSYNC® Ford E450 designed air beams by Dallas Smith Corp., rated specifically to vehicle’s GAWR, and provide enhanced “wide-trac” vehicle lateral and longitudinal stability.
- n) Rear vehicle springs shall consist of (2) 9,600 (lbs.) maximum combined capacity, single-lobe air springs by Firestone® utilizing OEM brackets to mount.

- o) Rear suspension air beam bushings shall use DSC LoPro™ Extenda-Life™ Heavy Duty Unlimited Travel Bushings.
- p) Vehicle front and rear suspension ride height shall be electronically controlled by four (4) Automatic precision ride height sensors with Air-Manifold to enhance overall vehicle performance, handling, and optimize wheel alignment for reduced tire wear.
- q) Vehicle front and rear suspension ride height shall be preset by a Ford recognized Quality Vehicle Modifier.
- r) Vehicle suspension shall incorporate a full vehicle kneel (4-Point) capability at all four corners lowering the vehicle height by approximately four inches at the passenger door location.
- s) The vehicle kneel feature shall be activated by a dash panel feature.
- t) A vehicle interlock shall be provided to prohibit moving the vehicle when in the kneeled position.
- u) Vehicle suspension shall have a Digital display “user interface” dash panel that monitors the overall performance of the air suspension system. Optional Programmable Real-time Diagnostics (kneel cycles, weight distributions, air pressures, and more)
- v) Vehicle suspension shall be capable of a full vehicle (4-Point) flow-controlled kneel, within a not-to-exceed time of approximately eight (8) seconds after the vehicle operator has activated the “full vehicle kneel” function located on vehicle dashboard. (Results based/validated on a vehicle at the maximum GVW rating specified by OEM.)
- w) Vehicle suspension shall be capable of a full air system recovery from a full vehicle (4-Point) “kneeled position”, to vehicle ride height, within a not-to-exceed time of approximately Four (4) seconds after the vehicle operator has activated the “vehicle raise” feature, located on vehicle dashboard (Results based/validated on a vehicle at the maximum GVW rating specified by OEM.)
- x) Vehicle suspension shall consist of two (2) specifically designed air tanks to meet the requirements, the rated duty-cycle application use, and power-coated both inside/outside of tank to protect against weather element corrosion, meeting the requirements of SAE J-10 and FMVSS standard 121.
- y) Vehicle suspension wiring shall be constructed to D.O.T. standards.
- z) Vehicle suspension wiring shall be adequately supported and protected from chafing, flexing, tension and vibration.
- aa) Vehicle suspension wiring shall be color-coded for identification.
- bb) Vehicle suspension wiring shall be easily referenced with a schematic/diagram

7) Air Lines

- a) Vehicle suspension air lines shall conform to the installation and material requirements of SAE J844 and D.O.T. standards.
- b) Vehicle suspension air lines shall be adequately supported and protected from chafing, flexing, tension & vibration.
- c) Vehicle suspension airlines and air line fittings shall be color-coded for identification.
- d) Vehicle suspension air lines shall be easily referenced with a schematic/diagram.

8) Safety Interlock System

- a) Vehicle shall be integrated with DSC Ford E450 low floor Air-Chassis® Intermotive Vehicle Control module (part #DSC001-GTWY505A).
- b) The safety interlock will disable the suspension lowering system unless certain vehicle safety conditions are achieved, and will lock the transmission shifter while in Park when the suspension is in the lowered or kneeled state, or if the Park Brake is applied. Locking the shifter while Park Brake is set prevents

premature brake wear from driving with the Park Brake set. A suspension pressure switch will also lock the shifter in the event of an air system issue (i.e. system air leak/low pressure).

- c) The safety interlock will also disable air compressor operation unless the engine is running to prevent draining the battery.

9) Manufacturer Certifications

- a) The body manufacturer must be an ISO 9001:2000 certified company and have a Fully Meets rating in the Ford Quality Vehicle Manufacturer Program. Proof of compliance must be submitted with the bid.
- b) A copy of the altona test for vehicle must be submitted with the bid.

10) Body Structure

The body must be constructed of minimum 16 gauge tubular steel cage body to ensure passenger safety. Minimum requirements include:

- a) Sidewalls shall be constructed of 1.5" x 1.5" 16-gauge tubular steel studs and corner posts on maximum 48" centers. A 14-gauge, 1-1/2" x 2" tubular horizontal stringer shall be welded to the top of the studs with a 16 gauge Z-rail welded to the studs at the bottom of the sidewall. Seat track shall be welded to the sidewall studs.
- b) The roof consists of 1.5" x 1.5" 16 gauge tubular steel rafters installed on maximum 48" centers. The rafters are welded into two (2) 16-gauge steel "U" shaped sidewall caps. The rafters, in conjunction with "C" channels, form a "steel cage" type of construction.
- c) The back wall has a 1.5" x 1.5" 16 gauge tubular steel frame, reinforced with 16-gauge "C" channel. A section of 16-gauge Z-channel shall be welded to the bottom of the back wall.
- d) The floor frame shall be constructed of 11-gauge, 2"x 2.88" x 2" channel cross members, on a maximum 34" center, with an outer 14-gauge angle steel impact rail. 11-gauge, 4" wide flat steel shall be provided to support the floor track. The floor frame shall be secured to the chassis frame in accordance with Ford's QVM requirements.
- e) The body shall be plumb, square and level before installation on the body.
- f) In order to ensure passenger safety in the event of skin delamination, the body structure shall comply with FMVSS 220, School Bus Rollover Protection, when tested without the exterior or interior skin. Proof of compliance (test results based on body structure alone) shall be submitted with the bid.

11) Corrosion Resistance

- a) In order to provide superior corrosion resistance, all tubular steel shall be galvanized, coated with a 99.9% pure zinc coating during the steel milling process. The steel shall have a minimum 50 ksi strength and three layers of corrosion prevention coatings.
- b) The body floor sub-frame assembly shall be primed to meet the 1,000 hour salt spray test per ASTM procedure B-117, with no structural detrimental effects to normally visible surfaces. The floor structure shall also be rated no less than five using the cross hatch adhesion test per ASTM D3359. Certification of compliance with this requirement shall be published by an independent company and will be submitted with the bid. Prior to shipment, the vehicle shall be undercoated.

12) Body Exterior

- a) The roof shall consist of a one-piece composite material that is light weight, extremely durable and impact resistant. The only roof seams that are allowed are at the junction of the roof skin and the front and rear caps.

- b) The roof shall have two (2) Emergency Escape & Ventilation Hatches designed to provide fresh air inside the vehicle along with a simple release mechanism for emergency exit.
- c) The exterior sidewall shall be constructed of two-side galvanized steel, minimum .020 (25 gauge), with a white pre-baked enamel exterior finish matching the chassis cab. The skin must be laminated to a substrate and bonded to the structure using urethane foam insulation. An aluminum trim rail, minimum 2" high, shall be applied to each side of the exterior skin, at the floor line of the bus.
- d) The entire exterior body surface shall be completely sealed, cleaned, sanded and primed prior to final finish. The final finish surface shall be coated with PPG Delfleet Evolution paint system or approved equal. The exterior paint shall be a polyurethane enamel finish meeting all State and Federal health and safety regulations. Port Arthur Transit Department will provide the required paint colors and graphics layout. All exterior painting shall be completed prior to installation of passenger interior, windows and exterior access doors. (See Figure 1 & 2)
- e) Exterior mirrors are to be remote controlled with turn indicator and heated.
- f) Rain gutters shall be provided to prevent water flowing from the roof onto the passenger doors and driver's side window. When the bus is decelerated, the gutters shall not drain onto the windshield, driver's side window or door boarding area. Cross-sections of the gutters shall be adequate for proper operation.
- g) The bumper shall be energy absorbing ch/cr (romeo rim) provided on the front of the bus with a license plate holding bracket. The rear bumper shall be, energy absorbing ch/cr (romeo rim) with anti-ride shield.
- h) Monograms, numbers, and other special signing specified by Port Arthur Transit Department shall be applied to the inside and outside of the bus as required. The bus numbers may be pressure sensitive appliques. Signs shall be durable and fade, chip, and peel-resistant. (See Figure 4)

13) Passenger Entry

- a) Vehicle shall be integrated with DSC Ford E450 low floor Air-Chassis® purpose built IntelliSYNC® Equalizer Ramp, Automatic adjustable Ramp - one continuous slope entry, computer controlled by IntelliSYNC® Electronic Air suspension System. The Equalizer Ramp assembly shall incorporate a Braun ramp with an 800 pound capacity with a minimum useable ramp area of 34" in width x 94" inches in length. The ramp angle shall not exceed 1:6 ratio.
- b) The entry door shall be an outward opening, two-leaf type with an overlapping rubber seal at the meeting edges of the door panels. The door shall be attached to the body with two heavy-duty steel pivot pins with nylon bushings. A heavy-duty bulb seal shall be installed at the top and hinged edge of the door. Each door panel shall have an 11-gauge aluminum frame and shall be glazed with a full-height AS2 glass panels. The door shall be electrically controlled by a switch located within reach of a seated driver. The door clear opening shall be a minimum of 38" wide by 74" high.
- c) Driver's Door - The original chassis door, with a roll-up window, shall be supplied.

14) Corrosion Resistance

Windows

- a) To create a feeling of light and spaciousness in the passenger compartment, the main passenger windows shall be as large as possible, 45" wide x 36" high minimum. Narrower windows may be used to fill smaller areas as necessary. The windows are to be glazed with nominal 1/8" tempered safety glass, in a top t-slider configuration. Emergency escape provisions shall comply with FMVSS 217.

- b) The driver curbside window shall be as large as possible. If necessary, multiple windows may be provided to meet this requirement.
- c) All windows (except for the Windshield) shall be tinted according to the Texas Window Tint Standards. (Window Tint Standards can be found in the Texas Administrative Code, Title 37, Part 1, Rule §21.1).

15) Electrical Power Distribution Center

- a) The body builder power distribution center must use connector plug in type or equivalent for easy removal or testing. It must be made of a heavy duty type printed circuit card with all base components located on the front of the card including all interior light relays, master relay, destination sign, master breaker and fuses. It must include an 80 amp non replaceable relay to minimize resistance for the ignition circuits including a 50 amp maxi fuse. All of the relays must be removable for replacement except the primary 80 amp relay and shall be +12v DC. All fuses shall be standard automotive type with the ability to upgrade to auto or manual reset circuit breakers upon request. LED lights shall be included for troubleshooting. Red LED indicates a fuse is blown and in use while a green LED indicates the relay is good and a yellow LED to indicate a signal wire is active. All grounds must use a connector plug in type at the electrical center for common grounding location and can only use single wire termination for each ground wire. All options included on the panel must be reversible by the use of a standard blade type fuse to communize parts. These options will be marked as Jumpers and shall be considered low current. The card shall contain a single common buzzer utilizing these jumpers. The buzzer shall have the ability to activate when lift door is open, rear door is open, entry door is open, window is open and an auxiliary input for other requested items.
- b) The power distribution center must include all major options to be adapted directly to the main card. These must be included on 3 distinct cards listed as stop request module, heater module and flasher module. All cards shall contain LED lights for troubleshooting. The cards below shall not use any harness or wires to connect to the main card. They shall use metal type standoffs to carry the circuit with screws.
- c) The stop request card shall include 2 different tones for passenger and ambulatory passengers per ADA requirements including a remote mounted speaker. A reset of the card must be included for entry door cycle or switch in the driver console.
- d) The heater module must have the ability to relay 2 separate heaters with independent high and low speeds. An output shall be included that is common for any heater output to be used for a water valve or pump.
- e) The flasher module shall contain options for OEM lights or body builder added lights through the use of jumpers. Options will include lift door open, rear door open, entry door open and an auxiliary input to activate for additional requested options. All jumpers shall be standard blade type fuses to standardize parts.

16) Electrical Wiring Harness

- a) General purpose wiring shall be cross-linked polyolefin insulated and shall meet SAE standards J1127 & J1128 types SGX and GXL. Wires shall be stamped every 6" and stamping shall be opposite color of wire to allow easy reading (dark wire uses white ink, light wires use dark ink). Multiple colors are required for different circuits and can be done through solid colors or colors with stripes. One color harnesses are not allowed. All harnesses shall contain a protective barrier through the use of loom, grommets, wire ties and insulated clamps. Routing shall be used as to best protect the harness. Protective covering shall be rated for the area of routing. Temperature, liquids and chafing shall be

considered. All connectors shall be plug in type and keyed connectors with locks meeting SAE automotive standards. Dielectric grease shall be used on all exterior connections. All primary harness connectors shall be color coded for ease of removal and assembly. The harness shall include all options available on the primary power distribution center and the use of add-on modules. This allows multiple spare circuits. The harness shall be split into sections for easy replacement with one single harness for the rear, body and front of the vehicle. All connectors must be accessible.

The complete electrical system shall be installed, certified, tested and warranted by the system manufacturer.

17) Lighting

- a) Exterior Lighting – All exterior lighting, with the exception of lighting supplied by the chassis manufacturer, shall be LED.
- b) All exterior lighting except the Backup lights shall flash while the Passenger Entry Door is in the open position.
- c) Interior Lighting – Interior lighting in the passenger compartment shall be LED Interior Vehicle Lighting by Hanover Displays LTD. (*Or approved equal*). Interior lighting must have a 10 year parts warranty. The passenger compartment lighting shall be controlled by a switch in the driver's center console.
- d) Light installation shall be designed to illuminate the lift platform when deployed at floor level at no less than two foot-candles of illumination. Outside light(s) shall provide at least 1 foot-candle of illumination on the street surface within 3 feet of step tread outer edge. This system shall provide illumination automatically when the lift door is open and meet ADA requirements. On-Off light switch shall be lift door actuated.
- e) Their shall be Attwood Surface Mount LED Docking Lights (*Or approved equal*) with Stainless Steel Bezel (part # 6522SS7), on both side on the rear of the Bus. Lights shall provide a 10-year warranty.

18) Floor

- a) The plywood floor shall be a minimum 3/4" thick, CDX plywood, mounted with Tek screws installed into the steel floor frame. All plywood edges should be sealed. The rear wheel housings shall be a minimum of 16 gauge steel.
- b) The finished floor shall be covered with Altro Timbersafe II transit flooring Rich Walnut (TS2024 WR227 AM227) with a minimum 2.0 mm thickness (*Or approved equal*). Flooring shall have a ten (10) year warranty.
- c) All Passenger isle nosing shall be Yellow in Color.

19) Insulation

- a) The insulation shall be a minimum of 1/2" thick polyurethane foam, sprayed between the exterior skin and the interior panels. Insulation shall be moisture proof and have excellent thermal and acoustic insulating characteristics.

20) Interior Panels & Finishes

- a) For wash ability, the ceiling and wall panels shall be vinyl coated luaun in a light gray color. Panels below the seat rail shall be Altro Timbersafe II transit flooring Rich Walnut (TS2024 WR227 AM227)

with a minimum 2.0 mm thickness (*OR APPROVED EQUAL*). H-rail and screws along the seams retain the ceiling panels. Trim molding covers the seams and fasteners. Interior sidewall panels are vinyl covered luaun. The panels are held in place at the lower edge by J-rail and at the top edge by the window trim ring. Pushpins secure the panels to the sidewall studs.

- b) Front bulkhead and transition panel cover shall be light gray ABS plastic.
- c) All Entry and Interior grab rails shall be yellow powder coated and installed on both sides of the front entry area. A stanchion and Lexan modesty panel shall be provided aft of the entry door.
- d) Interior advertising racks shall be installed above the passage window from front to back on both sides.
- e) A passenger stop request system will be provided on the bus. The system will consist of passenger pull cords mounted on both interior sidewalls of the vehicle, and a back-lighted "stop request" sign mounted on the front bulkhead of the bus.

21) Seating

- a) Driver Seat to be a USSC P2A Driver Air Suspension High back model with integrated, fixed headrest (*Or Approved Equal*) with the following options.
 - 1. Air Lumbar & Side Bolsters
 - 2. Adjustable Armrest
 - 3. Seat Cushion Tilt and Seat Cushion Extension
 - 4. Air Height Adjustment with Self-Contained Air Compressor and adjustable Shock Absorber
 - 5. Quick Air Dump Switch
 - 6. Seat Heater
 - 7. Fore/Aft Isolator
 - 8. Upholstery shall be Level 4 "Pleather" Black with Burgundy inlay with Burgundy stitching.
 - 9. Three (3) point retractable Seat Belt.
- b) *Passenger Seats* shall be freedman Citiseat Foldaway, (*Or Approved Equal*) mid-high type two step foldaway with the Wheel Chair Tie-Down Storage System option and three (3) point retractable Seat Belts, installed as shown on the vehicle floor plan.(see figure 3).
- c) The City does not accept the USSC G2E Driver Seat.

22) Heating/air conditioning

- a) The vehicle shall be equipped with an ACC Model TC-70 Rooftop a/c system (*Or approved equal*) capable of maintaining the interior temperature at 70 degrees F with an outside temperature of 95 degrees F and a relative humidity of 50%. The TC-70 shall meet the Las Vegas Pull Down in a 26 foot bus. The evaporator and condenser modules shall be roof mounted in a 1-piece all aluminum frame and a high impact UV resistant TPO cover. Unit height shall not exceed 8.75 inches. The conditioned air shall be distributed in the bus through a 360 degree directional free blow air plenum. The evaporator shall consist of (2) dual fan blower assemblies rated at 1,600 cfm. The evaporator coil shall be of a copper tube/aluminum fin design. The refrigeration circuit shall be an orifice tube and accumulator design. The accumulator shall be equipped with an oil pickup tube to insure proper oil return to the compressor on initial start up. The relay board shall be installed in a readily accessible location and shall be equipped with LED's for verification of electrical continuity between the board and the various functions.
- b) The condenser shall be a parallel flow micro-channel design. There shall be a minimum of two (2) 16" fan motor assemblies with totally enclosed axial type permanent magnet motors. The system shall be equipped with a TM-21 compressor belt driven from the engine crank pulley. Whenever possible, the

drive belt for the compressor shall be independent of the main drive belt, but may drive other engine accessories.

- c) The OEM and the rear a/c system shall be independent from each other.
- d) Hoses and fittings shall be the ATCO "Air-O-Crimp" style system qualified to SAE J-2064 specifications. The hoses shall be ATCO Barrier Hose with ATCO a/c series Hybrid Elastomer fittings.
- e) Rear Heater shall be a 35000 Btu W/Circulating Pump, controlled by a four (4) position (Off, Low, Medium and High) switch on the driver's center console.

23) Bicycle Rack A SportWorks model DL2 (OR APPROVED EQUAL)

- a) The bicycle rack shall be capable of carrying two bicycles. Allows customers with bicycles to access the transit system.
- b) The two bicycle rack shall not be greater than 27 inches deep nor more than 65 inches wide. A small footprint on the front of the bus.
- c) The bicycle rack shall accommodate bicycles with a wheelbase dimension of up to 44 inches. Accommodates the majority of bicycle frame sizes.
- d) The bicycle rack shall accommodate tire widths up to 2.35 inches. Accommodates most mountain bike tires.
- e) The bicycle rack shall secure bicycles up to 55 lbs. per wheel tray while the vehicle is moving. Additionally, the bicycle rack shall support a 250 pound (maximum) centrally located static load when it is deployed and the vehicle is not moving. Accommodates large and heavily weighted commuter bikes, cruisers and some electric bike models that fall below the per wheel tray weight requirements. The static load feature takes into account non-intended use such as a person standing on the rack to wash the bus front windshield.
- f) The Bicycle Rack shall have a three (3) year warranty (Parts and Labor).

24) Fire Suppression System

- a) Fire Suppression System shall be a Amerex Small Vehicle System (SMVS) (OR APPROVED EQUAL). with the following:
 - 1. Manual Fire Suppression Release on Display Face.
 - 2. 1 Hour Battery Back-up Using Standard 9V Battery.
 - 3. Audible Trouble and Fire Alarm.
 - 4. Vibration Resistant Detection Design.
 - 5. Two Heat Detectors and Two Nozzles.
 - 6. Rapid Response Heat Detection.
 - 7. Uses Existing Amerex Linear Actuator.
 - 8. 10VDC to 30VDC Operating Voltage.
 - 9. Internal Relay for Engine Shutdown.
 - 10. Low Power Consumption - 60 ma.
 - 11. 13.2 Pounds (6kg) of ABC Dry Chemical Powder.

25) Rearview Backup Camera System Rosco Safe-T-Scope™ 7" (OR APPROVED EQUAL).

- a) *STSC101* Camera
 - 1. 300,000 pixel image sensor
 - 2. 0.1 Lux sensitivity (18 IR-LED)
 - 3. Auto White Balance (AWB)

4. Field of view 110° Diagonal
5. Back Light Compensation (BLC)
6. Automatic electronic iris provides a clearer, more consistent image in low and bright light
7. Compact and lightweight design installs easily into most vehicles
8. Waterproof/dustproof IP69K rating
9. Wind deflector reduces buildup of dirt on lens
- b) STSM205 TFT LCD Color 7" Monitor to be mounted on the dashboard.
 1. Menu button for Picture, System and Options
 2. Camera 1/Camera 2 /Camera 3
 3. Power/stand-by switch
 4. Powerful built-in speaker
- c) Two (2) Color, Side-Mount Camera
 1. Horizontal resolution: 420 lines
 2. Lens focal length: 2.8 mm
 3. Dust/water rating: IP67
 4. Impact (shock) rating: 100G
 5. Vibration rating: 15G

26) Mobile Video Recording System

- a) Video Recording System shall be an eight (8) camera system with the following components: (see Figure 5 for placement).
- b) Seon *DX-HD* – 13 Channel Mobile Video Recording System (OR APPROVED EQUAL).
 1. The DVR must record 13 independent channels of video simultaneously. Switching systems are not acceptable.
 2. The DVR must record one camera at 720P HD resolution of 1280 x 720 progressive scan.
 3. The DVR must have dual stream for lower bandwidth applications for all video channels.
 4. The HD camera should support second stream of lower resolution to allow low bandwidth remote transmission.
 5. Each channel of video must record two (2) independent video streams; each stream must be independently configurable for resolution (the purpose of the dual stream feature is to allow for high quality recording at all times with the ability to stream the second channel of video through lower bandwidth transmission mediums).
 6. The DVR must record 12 channels of audio.
 7. The DVR must support data storage on dual 2.5" mobile ruggedized hard drives.
 8. The DVR must have hot-swappable, removable, dual drive, locking carrier.
 9. The DVR must support "failsafe" mode recording and switch from one to the other hard drive in case that one hard drive fails.
 10. The DVR hard drive must connect to a PC or laptop via a USB cradle.
 11. The DVR must offer a "One Touch Download" feature to download recordings with a single key press.
 12. The DVR must be able to transfer recorded video and audio to a removable USB Flash drive.
 13. The DVR must be capable of both vertical and horizontal mounting, including under-mount.
 14. The DVR must have: Compression: H.264 Recorded Resolution: 1280 x 720 (720P HD), 720 x 480 (D1) plus second 360 X 240 CIF low res stream Recorded Quality Settings: 4 levels, adjustable for each channel Recording Rate: DVR must be capable of recording 1 independent channels of video at

1280 x 720 (720P HD), and 12 independent channels of video at resolution of 720 x 480 (D1) Resolution @ 30FPS per channel and 12 independent channels of video at a resolution of 360 x 240 (CIF)Resolution at 30 FPS per channel Aggregate Recording Rate: 360 FPS - 30 FPS/camera @ 720 x 480 (D1) Resolution + second stream HD cartridge Single removable hot swappable cartridge containing two (2) hard drives Hard disk capacity: 2 TB

15. The DVR must have automatic repeat-record when hard drive is full (user selectable on/off).
 16. The DVR must have alarm settings and be programmable by recording resolution, frame rate, and quality per video channel.
 17. The DVR must have configurable protected memory for alarms.
 18. The DVR must have programmable timer record settings with selectable frame rates and image quality.
 19. The DVR must record vehicle voltage.
 20. The DVR must record vehicle position, direction, and speed with an optional GPS receiver. Vehicle speed recording using optional speed harness; external speed conditioner NOT required.
 21. The DVR must record up to five functions (signals) including brake lights, stop lights, warning lights, turn signals, wheelchair lift, etc... (user programmable).
 22. DVR record Delay Off: 0 - 60 min (user-selectable).
 23. DVR record Delay On: 0 - 60 min (user-selectable).
 24. DVR Power Delay Off 0 – 240 min (user-selectable).
- c) Video and Data Search Playback and Display Specifications at the DVR local UI
1. User interface: OSD with remote control, pointing device, web browser, vMax software suite.
 2. Display modes: 12+1 cameras + data.
 3. Playback rate: 1x to 32x.
 4. Search function: By time and date or event, alarms, signals.
 5. The DVR must have alarm settings programmable by recording resolution, frame rate, and quality per video channel.
 6. The DVR must have configurable protected memory for alarms.
 7. The DVR must have programmable timer record settings with selectable frame rates and image quality.
 8. Multilevel user access control and password protection must be available.
 9. The DVR must record and display time and date.
 10. The DVR must have field upgradeable firmware and hard drives.
 11. The DVR must have a built-in real time clock with automatic Daylight Savings Time adjustment (selectable on/off).
 12. Automatic Daylight Savings start/end dates and times setting must be configurable.
 13. All external signals, speed, GPS, and CAN inputs must be connected through a wiring consolidator module which can be installed in a separate location from the DVR.
 14. The DVR must support an optional GPS receiver for recording and displaying vehicle position, direction, and speed.
 15. The DVR must support geo-fencing using GPS receiver.
 16. The geo-fencing must have a configurable alarm.
 17. The geo-fencing parameters must be configurable.
 18. The DVR must be compatible with J1939 (CAN bus) - records and displays up to 10 signals.
 19. The DVR must have an on-screen voltage display.
 20. The DVR must have a temporary power button for operation and programming when bus is off.

21. The DVR must have a programmable monitor output for quad view or toggle view of video.
 22. The DVR must have Power Backup Module option to connect to battery independent from the vehicle main power.
- d) CA Series Wedge Camera
1. Resolution: 650 TV lines.
 2. Light sensitivity: 0.1 lux at F1.2/0.00 lux with IR illumination (included on some models).
 3. Day/Night function: Auto switches to B&W at low
 4. Illumination imager: 1/3" Sony CCD.
 5. Infrared illuminators: 18 high efficiency illuminators.
 6. Automatic electronic iris: 1/60-1/100,000 second.
 7. Signal to noise ratio: Greater than 48 dB.
 8. Video output: 1 VP-P/75 Ohms.
 9. Lenses supported: 2.9 mm, 3.6 mm, 6.0 mm, 16 mm and 25 mm.
 10. Warranty: Three 3 years parts and Labor.
- e) CQ Series Mobile IR Camera
1. Resolution: 520 TV lines.
 2. Light sensitivity: 0.1 lux at F1.2 (B&W, D/N) lux with IR illumination.
 3. Day/Night Function: Auto switches to B&W at low illumination.
 4. Imager: 1/3" Sony CCD.
 5. Infrared Illuminators: 14 high efficiency illuminators.
 6. Automatic Electronic Iris: 1/60-1/100,000 second.
 7. Signal to noise ratio: Greater than 50 dB (AGC off).
 8. Video output: 1 VP-P/75 Ohms.
 9. Warranty: Three 3 years parts and Labor.
- f) Audio Minimum Specifications
1. Audio output: Line level.
 2. Frequency response: 300 Hz - 5 KHz (filtered to improve voice quality).
 3. Sensitivity: Sensitivity adjustable.
- g) GPS4 Unit Minimum Specifications
1. Operating temp. range: -40 to 185°F (battery: -4 to 140°F), -40 ~ 85°C (battery: -20 ~ 60°C).
 2. Storage temperature: -40 to 257°F (-40 to 125°C).
 3. Waterproof: IP67.
 4. Power Supply: 3.3 ~5.5 VDC.
 5. Power Consumption: 31mA/average tracking.
 6. Dimensions: 1.4 x 1.65 x 0.6" (36 x 42 x 15 mm).
 7. Operating Humidity: 5 to 95% non-condensing.
 8. Cable length 9.84' (3 m).
 9. Warranty: Three 3-year parts and labor.
- h) Smart Reach Mobile Wireless System
1. Wireless Bridge Performance Specifications:
 - a. The wireless bridge shall be capable of supporting 802.11 a/b/g/n protocols.
 - b. The wireless bridge shall have Adjustable Channel support (5/10/20 MHz).
 - c. The wireless bridge shall be capable of transmitting data at an average of 28dBm up to 24Mbps using 802.11b/g while receiving data at 24Mbps with a minimum receiver sensitivity of at least -83dBm.

- d. The wireless bridge shall be capable of transmitting data at an average of 25dBm up to 36Mbps using 802.11b/g while receiving data at 36Mbps with a minimum receiver sensitivity of at least -80dBm.
- e. The wireless bridge shall be capable of transmitting data at an average of 24dBm up to 48Mbps using 802.11b/g while receiving data at 48Mbps with a minimum receiver sensitivity of at least -77dBm.
- f. The wireless bridge shall be capable of transmitting data at an average of 23dBm up to 54Mbps using 802.11b/g while receiving data at 54Mbps with a minimum receiver sensitivity of at least -75dBm.
- g. The wireless bridge shall be capable of transmitting data at an average of 28/25dBm* MCS0 using 802.11n while receiving data MCS0 with a minimum receiver sensitivity of at least -96dBm.
- h. The wireless bridge shall be capable of transmitting data at an average of 28/25dBm* MCS1 using 802.11n while receiving data MCS1 with a minimum receiver sensitivity of at least -95dBm.
- i. The wireless bridge shall be capable of transmitting data at an average of 28/25*dBm MCS2 using 802.11n while receiving data MCS2 with a minimum receiver sensitivity of at least -92dBm.
- j. The wireless bridge shall be capable of transmitting data at an average of 28/25dBm* MCS3 using 802.11n while receiving data MCS3 with a minimum receiver sensitivity of at least -90dBm.
- k. The wireless bridge shall be capable of transmitting data at an average of 27/24dBm* MCS4 using 802.11n while receiving data MCS4 with a minimum receiver sensitivity of at least -86dBm.
- l. The wireless bridge shall be capable of transmitting data at an average of 25/22dBm* MCS5 using 802.11n while receiving data MCS5 with a minimum receiver sensitivity of at least -83dBm.
- m. The wireless bridge shall be capable of transmitting data at an average of 23/20dBm* MCS6 using 802.11n while receiving data MCS6 with a minimum receiver sensitivity of at least -77dBm.
- n. The wireless bridge shall be capable of transmitting data at an average of 22/19dBm* MCS7 using 802.11n while receiving data MCS7 with a minimum receiver sensitivity of at least -74dBm.
- o. The wireless bridge shall support an N connector to connect to an appropriate antenna.

2. Wireless Bridge Electrical Specifications:

- a. The wireless bridge shall operate between 8VDC and 32 VDC with the Seon POE adapter.
- b. The wireless bridge shall consume less than 7W.
- c. The wireless bridge shall be powered via the Ethernet Port.

3. Wireless Bridge Mechanical Specifications:

- a. The wireless bridge dimensions shall not exceed 6 in X 1.25in X 1.45 in (15.2cm. x 3.1 cm. x 3.7cm.).
- b. The wireless bridge shall not exceed 6.5 ounces (180g).

i) vMax® View

- 1. The vendor is required to provide a user-interface to view, search, archive and manage video associated with the mobile video recording system.

2. Video review software must support the following operating systems: Windows XP SP3, Windows Vista, Windows 7 (32 & 64-bit versions).
3. Minimum system requirements for operating the software shall be: dual core CPU or higher, 1024 x 768 monitor resolution, 32-bit color quality, sound card & speakers, USB2.0, 1GB RAM or higher, 10 GB of available hard disk space, CD-ROM drive.
4. The video review software shall be scalable and capable of resizing the viewing area, or maximizing the window to full screen.
5. The vMax view shall enhance the privacy of drivers and passengers with its new blurring feature. Software users can easily blur the faces of all people in the video to ensure security. The feature is applied to the video as opposed to a single snap-shot.
6. The video review software shall support the automatic detection of media and display the total hard drive capacity upon being recognized.
7. Similarly, the video review software shall allow for searching and opening of previously saved archive files in a proprietary format.
8. The video review software shall sort all available video segments by vehicle ignition cycles (i.e. DVR power-on/off).
9. Video review software shall include a calendar function that allows for searching of video segments. The calendar function shall provide visual feedback of any days that contain video data. It shall:
 - a. Highlight in green the currently selected day that contains data.
 - b. Highlight in gray any day that contains available data.
 - c. Highlight in red any day that contains an alarm event.
10. The video review software shall also provide the capability for time search (hours: minutes: seconds) within a selected day.
11. The video review software shall allow user-friendly searching of all data residing on the hard disk. Search options should include:
 - a. Alarm Events
 - b. DVR Log Events
 - c. Time & Date
 - d. Telemetry
 - e. Display
12. The video review software shall allow for flexible channel display options including:
 - a. Single-Channel Display
 - b. Quad-Display
 - c. 6-Channel Display
 - d. 9-Channel Display
 - e. 13-Channel Display
 - f. 16-Channel Display
13. The video review software shall allow for any display window to be “undocked” from the software to allow for further flexibility and multi-monitor support.
14. The video review software shall allow for the ability to create an unlimited number of customizable display modes within the viewing pane. The software shall provide the means to save an unlimited number of customized displays that can be accessed based on user-preference.
15. The video review software shall allow for the review of audio from any single channel independent of video being displayed.

16. The video review software shall utilize a segment graph displaying all video segments available on the hard drive. Display options shall be such that the user can toggle between daily or hourly display of available video segments.
17. The video review software shall utilize user-friendly intuitive controls for initiating:
 - a. Video Playback
 - b. Pause
 - c. Fast-Forward
 - d. Rewind
 - e. Frame-Advance
 - f. Next Video Segment
 - g. Playback Loop
18. The video review software shall provide the user with a means for adjusting audio volume from within the software.
19. The video review software shall allow for complete flexibility, allowing the user to configure how the video is displayed. It shall:
 - a. Select which channel to display in any given window.
 - b. Select telemetry display in any given window.
20. Telemetry options to be displayed within any given window shall include:
 - a. GPS map display indicating vehicle position (if optional GPS module is installed).
 - b. Vehicle speed.
 - c. DVR signal inputs (turn signals, brakes, etc. – if connected).
 - d. Idling (if connected).
 - e. G-Sensor (if connected).
21. Provided mapping functionality shall access map data from the internet and shall be free of charge. No third party mapping programs that require installation of mapping software will be accepted.
22. Provided mapping functionality shall be displayed synchronized with video and represent the exact vehicle location during the date and time represented within the software.
23. GPS data shall be stored as a separate stream of data from the video. GPS mapping that requires the use of a DVR channel will not be accepted.
24. The video review software shall allow for the visual display of:
 - a. Current time and date of video being reviewed.
 - b. Start and end of time and date of the video segment.
 - c. Bus number.
 - d. Vehicle voltage.
25. The video review software shall allow for the specification of start and stop date and time for a desired video archive utilizing a very simple two-click method.
26. The video review software shall incorporate an archiving wizard that walks the user through various options during the archiving process for maximum ease of use.
27. The video review software shall allow for the capability to customize and save archive settings based on user-preference to be used for all future archives.
28. The video review software shall provide the user with the option to save a video archive in one of three formats:
 - a. Proprietary Video Format
 - b. WMV
 - c. AVI

- d. JPEG (still image)
- e. BMP (still image)
- 29. Video systems that do not store data in a native proprietary format will not be accepted due to concerns surrounding access to data.
- 30. The video review software shall automatically export all video, audio and associated metadata for archives that are performed in proprietary format.
- 31. The video review software shall allow the user to select any one or combination of cameras to be archived in a non-proprietary format. When multiple cameras are selected, the software shall export a single non-proprietary file (AVI, WMV) that contains all selected cameras.
- 32. The video review software shall allow users to specify video quality and size for any archives that are performed in non-proprietary format.
- 33. The video review software shall allow users to turn on/off text overlay as well as change the colored appearance of the text overlay for any archives that are performed in non-proprietary format.
- 34. The video review software shall feature the ability to specify privacy zones in order to mask user-selectable areas of the video for any archives that are performed in non-proprietary format.
- 35. The video review software shall allow users to select an unlimited quantity of 4-point areas of any single or combination of cameras to be masked during the archive process.
- 36. The end result shall be a non-proprietary video file (AVI or WMV) with specific user-selected areas of the video blurred or masked during video review.
- 37. The masking feature shall in no-way modify the original data associated with the video segment and will only be available for files archived in non-proprietary format.
- 38. The video review software shall feature an integrated help file detailing all features and functionality available within the software. The help file shall be easy to navigate and incorporate screen captures for maximum ease of use.
- 39. The provided help file shall allow a user to point a computer mouse over a specific area within the software, and pressing F1 will launch the section of the help file specific to the selected feature.

27) Fare box

- a) Fare box shall be an illuminated M4 Main, Gray in Color, with one (1) spare Volt and two (2) sets of Keys.

28) Radio and Communication

- a) AM/FM stereo including a Digital Clock, single CD player (MP3 compatible), OEM speakers with four (4) speakers additional installed in the passengers compartment and a auto input jack.
- b) Each vehicle shall be equipped with a new Motorola XPR 4550 403-470 1-4W 160CH FKP WITH GPS model AAM27QPH9LA1AN two-way radio with the following options: RMN5065A Microphone; RLN6079 Locking trunion; RKN4136 Ignition switch cable; and PMAE4033A Antenna. The radio is to be installed by an authorized Motorola Service Station in a manner consistent with the standards of good engineering practice. During installation, call for Programming information.

29) Destination Sign

- a) Full Color Displays
 - 1. The display shall consist of Full Color LED's. All Full Color LED's used for the destination sign shall be rated for a 50,000-hours. The entire display area of all sign shall be clearly visible and readable both in direct sunlight and at night with a viewing angle of at least 140 degrees.

2. The characters formed by the LED's shall meet the requirements of the Americans with Disabilities ACT (ADA) of 1990 Reference 49 CFR Section 38.39. The software will give the end user the capability to select from a vast selection of custom fonts, pre-programmed fonts and the Microsoft TrueType Directory fonts for display on the LED Sign for the most customization possible to the desire of the end user's riding public.
3. Destination sign shall be supplied with an ambient light detection sensor that controls the LED intensity according to the exterior light conditions. This adjustment shall be continuously linear, not stepped, from 10-100% output.

30) Front Destination Sign

- a) Each sign will contain common processor and power supply circuit boards to ease maintenance and spare parts stock control. Each Individual sign within each vehicle will be identified by the use of a user selectable rotary address switch:
- b) 128 Columns by 15 Rows, The Front Sign shall have no less than 1920 LED's, with a message display area of not less than 6" high by not less than 48.5" wide. The sign enclosure itself will be no longer than 51", by no more than 9" high and less than 2" deep. The destination message shall be readable by a person with 20/20 vision from a distance of 250'. The sign shall have equal readability at 70 degrees on either side of the line perpendicular to the center of the mean plane of the display. The sign should weigh no more than 14lbs. The power connector will be a sealed 'weather pack' model.
- c) The above sign will be Full Color unless otherwise specified. The above sign shall be available in Amber, white or single panel color if requested. If above specified sign sizes are not optimal, vendor will be requested to manufacture other sign sizes available as requested or will custom build per specification as requested.

31) System Control Eric and Programming

- a) All system control and drive PC boards shall be enclosed in either the sign housings or in the System Control Console. The destination sign can be programmed to display either one common message or each sign can display an independent message. The System Control Console Eric shall incorporate a flexible keypad with no moving parts.
- b) The system control console Eric shall be used to view display messages and contain the destination sign database. The driver console shall utilize a tactile membrane keypad. The system control console shall be equipped with an LCD display.
- c) Sign system shall be capable of sequentially displaying a minimum of one pre-selected destination message and one public relations message. The operator shall be able to quickly change between pre-selected destination messages without re-entering a message code. Public relations messages shall be capable of being displayed alternately with the regular destination.
- d) The Master Coach Run Switch shall control power to the sign system. The sign shall operate in all positions of this switch except off. The sign shall be internally protected against voltage transients and RFI interference to ensure proper operation in a bus environment.

32) System Control Console Eric

- a) The system control console Eric shall be used to view and update display messages. The system control console shall utilize a multiple function keyboard with tactile feel, designed especially for the harsh transit environment. The system control console shall contain an LCD display. The system control

console shall continuously display the complete message associated with the selected destination code. Diagnostics and/or maintenance and test features that indicate any sign defects shall be included.

- b) The system shall be capable of integrating to on-board computer devices for message listing program via anyone of several possible protocols, including but not limited to J1708, RS485, RS232, RS422 or IBIS. The sign system shall be capable of wireless upload capability for receiving the messaging database. The sign system shall be reprogrammable through the system control console by either a standard USB Thumb Drive or via a 9-pin "D" type key fob memory device.

33) Emergency and Wheelchair Deploy Message Display

- a) A pre-programmed emergency message may be activated using a customer-selected switch located in the driver area. This message shall be displayed on sign facing outside the vehicle, while signs inside the vehicle, including the driver console, remain unchanged. Removing the emergency signal or entering a new destination shall cancel this message. System shall also be capable of showing a wheelchair graphic on the rear sign automatically when the wheelchair is deployed.

34) System Level Diagnostics

- a) The system control console shall provide, at a minimum, visual indication of system level errors with the destination signs. This shall include detection of communication failure, power supply failure on a particular sign and display board failure on a particular sign.

35) Programming

- a) A PC-based software package will be furnished for creating the destination sign messages. The character shape and size shall be programmable and the software should allow the creation of personalized fonts. These may vary in pixel height and comprise single, double and triple stroke typeface. The program will allow an unlimited amount of special characters, logos or fonts to be displayed.
- b) A programming software package shall be furnished to generate message lists for the destination sign system. It shall be a Windows© compatible software package, using drop down menus and help screens. The software shall not require a standalone computer or a computer of a specific make or model. The software will allow, at a minimum, individual font selection, shape and choice of fonts, font creation and import, destination display management (right or left route numbers, pre-defined text fields, alternating screens and scrolling), as well as full system previews are available for all sign. The software shall also offer utilization of the TrueType font directory for programming. Graphic capabilities are available to allow personal logo creation as well as selection from pre-programmed pictograms.
- c) The programming software shall use techniques that require minimal operator training and are intended for use by operators that are not trained in complex computer operations.

36) Warranty & Spares

- a) All Full Color sign and components of the Full Color sign system shall be covered by a five 5-year warranty. Free spare parts, (whole components), shall be provided to the end user free of charge for storage and use at the end users selected facility. The number of spares to be provided will be commensurate with the number of original systems purchased and shall be agreed to by all parties at the execution of a contract.

37) Emergency Equipment

- a) All The bus shall be equipped with a minimum 5 lb. ABC rated fire extinguisher, 16-unit first aid kit, and triangular hazard kit. Emergency equipment shall be stowed in the driver area.
- b) Bus shall have a backup alarm that meets the requirements of SAE J994 for high pressure wash to operate when the Transmission is in the reverse position.
- c) A Model 7500 Driver Alert Device shall be installed in the center of the rear of the Bus just under the top Clearance lights. All wiring shall be to manufacturer's instructions except for the RED W/ WHITE STRIPE (DO NOT PASS, RIGHT RED WARN) wire. The DO NOT PASS shall be disabled.

38) Road and Water Test

- a) Prior to shipment the bus shall undergo thorough road and water testing to verify operational readiness. The test results shall be furnished to Port Arthur Transit.
- b) The purpose of the road tests is to observe and verify the operation of the bus as a system and to verify the functional operation of the subsystems that can be operated only while the bus is in motion. Each bus shall be driven a minimum of 15 miles on the road test.
- c) Prior to water test, the bus shall be driven a minimum of one-half mile on a track simulating various rough road conditions including staggered bumpers, chatter bumps and frame twists. The water test shall be run for 15 minutes to check the integrity of the vehicle's body seams, window frame seals and other exterior component close-outs for their ability to keep rainwater, road splash, melting snow and slush, and other exterior water from entering the inside of the vehicle. If a water leak is found, it will be repaired and the vehicle will be retested.

39) Serviceability

- a) Each IntelliSYNC® air-ride suspension system shall be designed and built with ease of service in mind.
- b) In addition to the contractor supplied information; vehicle suspension manuals, diagrams, schematics, and part's reference shall be available-accessible online and downloadable/printable.
- c) Each suspension manual will have a Table of Contents for the manual in its entirety, and additionally, each chapter shall contain adequate information to permit the reader to quickly and accurately locate the material they seek.
- d) Bidder shall furnish all manuals, diagrams, schematics, and part's reference shall be printed or available-accessible online and downloadable form the OEM of the Cutaway and the OEM of the Body Manufacturer.
- e) Bidder shall supply Parts for the OEM Body and Suspension for no less then ten (10) years.

40) Quality Assurance

- a) The Contractor's Quality Management System shall be registered as compliant with ISO 9001:2008.

41) Approved Equals

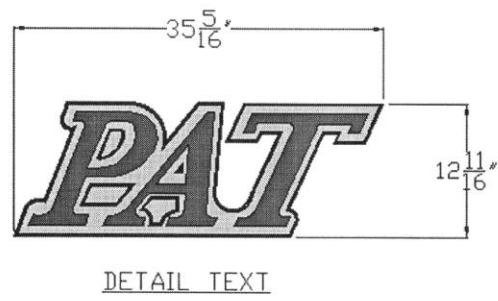
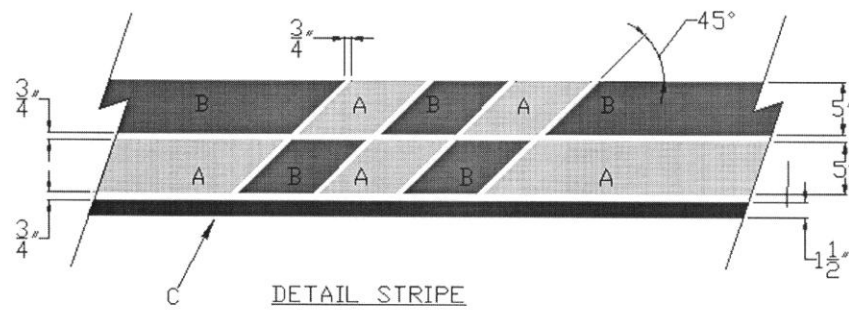
- a) City will accept the IFM suspension system.
- b) The City will accept a FRP skin body exterior.
- c) The City will accept the Soundoff LED interior lighting.
- d) The City will accept Gerflor flooring.
- e) The City will accept a heater with and switch with 3 position switch.
- f) The City will accept a Diamond farebox.
- g) The City will accept a GM4500 14,200 lb. GVWR

- h) The City will accept a 4600 lb. GAWR front axle with independent suspension and 9600 lb. GAWR rear axle.
- i) The City will accept a 6.0L Vortec V8 with GM Liquid propane fuel system with 300 HP at 4400 RPM and 360 Lb/Ft at 4000 RPM with a 5 year 100,000 mile warranty for the Power train and LPG system.
- j) The City will accept a 6 speed automatic.
- k) The City will accept an Intermotive GTWY 605 for Engine Fast Idle.
- l) The City will accept the Arboc front entry for Low Floor Modification.
- m) The City will accept the Arboc /Airlift/Reyco Granning system.
- n) The City will accept Intermotive GTWY605 for Safety Interlock.
- o) The City accepts the Arboc body structure.
- p) The City will accept the Arboc corrosion protection with 1500 hours.
- q) The City will accept a single roof hatch and additional emergency egress window.
- r) The City will continuous FRP corrosion resistant exterior wall.
- s) No paint is required for the white area on the bus.
- t) The City will accept any non white painting be applied after installation of passenger interior, window and access doors to facilitate offsite transit to your paint shop eliminating exposure to weather.
- u) The City will accept a standard Braun or Ricon 34" x 62" ramp.
- v) The City will accept a 39"x75 " clear door opening and 35"x75" at entry assist rails.
- w) The City will accept the Arboc electrical system.
- x) The City deletes the specification for all exterior lights except back up light to flash while passenger door is in open position.
- y) The City accepts ITC brand PN 69767 LED lights.
- z) The City accepts the use of 1 ½ " solid foam.
- aa) The City will accept FRP for interior walls and ceiling.
- bb) The City will accept the Freedman Feather Weight Mid-High Seating.

Figure 1: Paint



Figure 2: Striping



MIT - FORMER SEAL LESS 7062 & 7063

Figure 4: Numbering



CITY OF PORT ARTHUR, TEXAS
BID SHEET

BID FOR: Purchase of two (2) Paratransit Buses for Transit

BID DUE DATE: May 6, 2015

ITEM	QUANTITY	UNIT COST	TOTAL COST
Purchase of two (2) Paratransit Buses for Transit	2	\$	\$

Make/Model: _____

Delivery Time: _____ **Calendar Days**

COMPANY NAME

STREET ADDRESS

SIGNATURE OF BIDDER

P.O. BOX

PRINT OR TYPE NAME

CITY STATE ZIP

TITLE

AREA CODE TELEPHONE NO.

EMAIL

FAX NO.

NON-COLLUSION AFFIDAVIT

CITY OF PORT ARTHUR §
 §
STATE OF TEXAS §

By the signature below, the signatory for the bidder certifies that neither he nor the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm bidding this project has violated the antitrust laws of this State, codified at Section 15.01, *et seq.*, Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in the same line of business, nor has the signatory or anyone acting for the firm, corporation or institution submitting a bid committed any other act of collusion related to the development and submission of this bid proposal.

Signature:

Printed Name: _____

Title: _____

Company: _____

Date: _____

SUBSCRIBED and sworn to before me the undersigned authority by _____ the _____ of, _____ on behalf of said bidder.

Notary Public in and for the
State of Texas

My commission expires: _____

AFFIDAVIT

All pages in Offeror's Responses containing statements, letters, etc., shall be signed by a duly authorized officer of the company whose signature is binding.

The undersigned offers and agrees to one of the following:

_____ I hereby certify that **I do not have** outstanding debts with the City of Port Arthur. I further agree to pay succeeding debts as they become due.

_____ I hereby certify that **I do have** outstanding debts with the City of Port Arthur and agree to pay said debts prior to execution of this agreement. I further agree to pay succeeding debts as they become due.

_____ I hereby certify that **I do have** outstanding debts with the City of Port Arthur and agree to enter into an agreement for the payment of said debts. I further agree to pay succeeding debts as they become due.

Firm Name

Date

Authorized Signature

Title

Name (please print)

Telephone

Email

STATE: _____

COUNTY: _____

SUBSCRIBED AND SWORN to before me by the above named _____

on this the _____ day of _____, 20____.

Notary Public

RETURN THIS AFFIDAVIT AS PART OF THE BID PROPOSAL

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For Vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001 (1-a) with a local governmental entity and the person meets requirements under Section 176.006 (a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

1. Name of person who has a business relationship with local governmental entity.

2. ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name of a local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001 (1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐

Yes

☐

No

- B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government Officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐

Yes

☐

No

- D. Describe each employment or business relationship with the local government officer named in this section.

4. _____
Signature of person doing business with the governmental entity Date

GENERAL INFORMATION:

NOTE: It is extremely important that the Vendor, Bidder, and/or Contractor furnish the City of Port Arthur the required information specified in Bid or Proposal Specifications listed in this Bid Package.

All bids meeting the intent of this request for bid will be considered for award. BIDDERS TAKING EXCEPTION TO THE SPECIFICATIONS, OR OFFERING SUBSTITUTIONS, SHALL STATE THESE EXCEPTIONS BY ATTACHMENT AS PART OF THE BID. The absence of such a list shall indicate that the bidder has not taken exceptions and the City shall hold the bidder responsible to perform in strict accordance with the specifications of the invitation. The City reserves the right to accept any and all or none of the exception(s)/substitutions(s) deemed to be in the best interest of the City of Port Arthur.

ALTERING BIDS: Bids cannot be altered or amended after submission deadline. Any interlineations, alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

BID AWARD: The City of Port Arthur will review all bids for responsiveness and compliance with these specifications. The award shall be made to the responsive, responsible bidder who submits the best value bid.

The City reserves the right to:

1. Reject any and all bids and to make no award if it deems such action to be in its best interest.
2. Award bids on the lump sum or unit price basis, whichever is in the best interest of the City.
3. Reject any or all bids and to waive informalities or defects in bids or to accept such bids as it shall deem to be in the best interests of the City.
4. Award bids to bidders whose principal place of business is in the City of Port Arthur and whose bid is within 5% of the lowest bid price, as provided by Section 271.905 of the Texas Government Code.

TERMINOLOGY: "Bid" vs. "Proposal"--For the purpose of this ITB, the terms "Bid" and "Proposal" shall be equivalent.

Bidders are cautioned to read the information contained in this ITB carefully and to submit a complete response to all requirements and questions as directed.

CONFLICT OF INTEREST: No public official shall have interest in this contract, in accordance with Vernon's Texas Code Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

ETHICS: The bidder shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the City of Port Arthur.

MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS: A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder must meet the following requirements:

1. Be able to comply with the required or proposed delivery schedule.
2. Have a satisfactory record of performance.
3. Have a satisfactory record of integrity and ethics.
4. Be otherwise qualified and eligible to receive an award.
5. Be engaged in a full time business and can assume liabilities for any performance or warranty service required.
6. The City Council shall not award a contract to a company that is in arrears in its obligations to the City.
7. No payments shall be made to any person of public monies under any contract by the City with such person until such person has paid all obligations and debts

owed to the City, or has made satisfactory arrangements to pay the same.

ADDENDA: Any interpretations, corrections or changes to the ITB and Specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the City of Port Arthur Purchasing Manager. The City assumes no responsibility for the bidder's failure to obtain and/or properly submit any addendum. Failure to acknowledge and submit any addendum may be cause for the bid to be rejected. It is the vendor's responsibility to check for any addendums that might have been issued before bid closing date and time.

PORT ARTHUR PRINCIPAL PLACE OF BUSINESS: Any bona fide business that claims the City of Port Arthur as its principal place of business must have an official business address (office location and office personnel) in Port Arthur, the principal storage place or facility for the equipment shall be in Port Arthur and/or the place of domicile for the principal business owner(s) shall be in Port Arthur or such other definition or interpretation as is provided by state law. Contractors outside the City of Port Arthur are allowed to bid.

PRICES: The bidder should show in the proposal both the unit price and total amount, where required, of each item listed. In the event of error or discrepancy in the mathematics, the unit price shall prevail.

PURCHASE ORDER: A purchase order(s) shall be generated by the City of Port Arthur to the successful bidder. The purchase order number must appear on all itemized invoices.

INVOICES: All invoices shall be mailed directly to the City of Port Arthur, Attn.: **Transit**, P.O. Box 1089, Port Arthur, Texas 77641.

PAYMENT: Payment will be made upon receipt of the original invoice and the acceptance of the goods or services by the City of Port Arthur, in accordance with the State of Texas Prompt Payment Act, Article 601f V.T.C.S. The City's standard payment terms are net 30, i.e. payment is due 30 days from the date of the invoice.

SALES TAX: The City of Port Arthur is exempt by law from payment of Texas Sales Tax and Federal Excise Tax; therefore the proposal shall not include Sales Tax.

VENUE: This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Port Arthur, Texas, Jefferson County.

COMPLIANCE WITH LAWS: The Contractor shall comply with all applicable laws, ordinances, rules, orders, regulations and codes of the federal, state and local governments relating to performance of work herein.

INTEREST OF MEMBERS OF CITY: No member of the governing body of the City, and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and, the Contractor shall take appropriate steps to assure compliance.

DELINQUENT PAYMENTS DUE CITY: The City of Port Arthur Code of Ordinances prohibits the City from granting any license, privilege or paying money to any-one owing delinquent taxes, paving assessments or any money to the City until such debts are paid or until satisfactory arrangements for payment has been made. Bidders must complete and sign the AFFIDAVIT included as part of this ITB.

QUANTITIES: Quantities shown are estimated, based on projected use. It is specifically understood and agreed that these quantities are approximate and any additional quantities will be paid for at the quoted price. It is further understood that the contractor shall not have any claim against the City of Port Arthur for quantities less than the estimated amount.

SHIPPING INFORMATION: All bids are to be F.O.B., City of Port Arthur, Port Arthur, TX 77640

INCORPORATION OF PROVISIONS REQUIRED BY LAW: Each provision and clause required by law to be inserted into the Contract shall be deemed to be enacted herein and the Contract shall be read and enforced as though each were included herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted the Contract shall be amended to make such insertion on application by either party.

CONTRACTOR'S OBLIGATIONS: The Contractor shall and will, in good workmanlike manner, perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, in accordance with the provisions of this Contract and said specifications.

The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail.

While the purpose of the specifications is to indicate minimum requirements in the way of capability, performance, construction, and other details, its use is not intended to deprive the City of Port Arthur the option of selecting goods which may be considered more suitable for the purpose involved.

In the event of conflicts between the written bid proposal and information obtained verbally, the vendor is specifically advised that the written bid proposal will prevail in the determination of the successful bidder.

Under the Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

TERMINATION FOR CAUSE: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of this contract, the City shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

TERMINATION FOR CONVENIENCE: The City may terminate this contract at any time giving at least thirty (30) days notice in writing to the Contractor. If the Contract is terminated by the City as provided herein, the Contractor will be paid for the service that it has performed up to the termination date. If this contract is terminated due to fault of the Contractor, the previous paragraph hereof relative to termination shall apply.

RELEASES AND RECEIPTS: The City of Port Arthur before making payments may require the Contractor to furnish releases or receipts for any or all persons performing work and supplying material or service to the Contractor, or any sub-contractors for work under this contract, if this is deemed necessary to protect its interests.

CARE OF WORK: The Contractor shall be responsible for all damages to person or property that occurs as a result of his fault or negligence in connection with the work performed until completion and final acceptance by the City.

SUB-CONTRACTS: The Contractor shall not execute an agreement with any sub-contractor or permit any sub-contractor to perform any work included in this Contract until he has received from the City of Port Arthur written approval of such agreement.

INSURANCE: All insurance must be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by Owner. The Contractor shall, at his own expense, purchase, maintain and keep in force insurance that will protect against injury and/or damages which may arise out of or result from operations under this contract, whether the operations be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, of the following types and limits

1. Standard Worker's Compensation Insurance:
2. Commercial General Liability occurrence type insurance City of Port Arthur, its officers, agents, and employees must be named as an additional insured):
 - a. Bodily injury \$500,000 single limit per occurrence or \$500,000 each person/\$500,000 per occurrence for contracts of \$100,000 or less; or Bodily injury \$1,000,000 single limit per occurrence or \$500,000 each person /\$1,000,000 per occurrence for contracts in excess of \$100,000; and,
 - b. Property Damage \$100,000 per occurrence regardless of contract amount; and,
 - c. Minimum aggregate policy year limit of \$1,000,000 for contracts of \$100,000 or less; or, Minimum aggregate policy year limit of \$2,000,000 for contracts in excess of \$100,000.
3. Commercial Automobile Liability Insurance (Including owned, non-owned and hired vehicles coverage's).
 - a. Minimum combined single limit of \$500,000 per occurrence, for bodily injury and property damage.
 - b. If individual limits are provided, minimum limits are \$300,000 per person, \$500,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage.

Contractor shall cause Contractor's insurance company or insurance agent to fill in all information required (including names of insurance agency, contractor and insurance companies, and policy numbers, effective dates and expiration dates) and to date and sign and do all other things necessary to complete and make into valid certificates of insurance and pertaining to the above listed items, and before commencing any of the work and within the time otherwise specified, Contractor shall file completed certificates of insurance with the Owner.

None of the provisions in said certificate of insurance should be altered or modified in any respect except as herein expressly authorized. Said CERTIFICATE OF INSURANCE Form should contain a provision that coverage afforded under the policies will not be altered, modified or canceled unless at least fifteen (15) days prior written notice has been given to the City of Port Arthur. Contractor shall also file with the City of Port Arthur valid CERTIFICATE OF INSURANCE on like form from or for all Subcontractors and showing the Subcontractor (s) as the Insured. Said completed CERTIFICATE OF INSURANCE Form (s) shall in any event be filed with the City of Port Arthur not more than ten (10) days after execution of this Contract.

NOTICE TO PROCEED: Notice to Proceed shall be issued within ten (10) days of the execution of the Contract by OWNER. Should there be any reasons why Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between OWNER and CONTRACTOR.

CELL PHONE OR PAGER: The Contractor must have a working cell phone or pager available Monday through Friday from 8:00 a.m. to 5:00 p.m. so that the City will be able to contact the contractor.

LIQUIDATED DAMAGES: Liquidated damages will be \$150.00 per day.

FEDERAL REQUIREMENTS

Access to Records

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the Agency, the FTA Administrator, the Comptroller General or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The following access to records requirements apply to this Contract:

Local Governments

In accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Agency, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.

State Governments

In accordance with 49 CFR 633.17, the Contractor agrees to provide the Agency, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Federal Funding, Incorporation of FTA Terms and Federal Changes

The preceding provisions include, in part, certain standard terms and conditions required by the Department of Transportation, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or its successors are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act or refuse to comply with any Port Arthur Transit requests that would cause Port Arthur Transit to be in violation of the FTA terms and conditions.

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Agency and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

Federal Energy Conservation Requirements

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Civil Rights Requirements

The following requirements apply to the underlying Contract:

1. **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC§ 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and federal transit law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to the underlying Contract:
 - (a) **Race, Color, Creed, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and federal transit laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 USC § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) **Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §§ 623 and federal transit law at 49 USC § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) **Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

No Government Obligation to Third Parties

1. The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the Solicitation or award of the underlying Contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or it causes to be made, pertaining to the underlying Contract or the FTA-assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC § 5307, the government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

Suspension and Debarment

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C, in any lower-tier covered transaction it enters into.

By signing and submitting its bid or Proposal, the Bidder or Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Port Arthur Transit. If it is later determined that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to Port Arthur Transit, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C, while this Proposal is valid and throughout the period of any Contract that may arise from this Proposal. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Disadvantaged Business Enterprise (DBE)

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

The Contractor shall maintain compliance with “DBE Approval Certification” throughout the period of Contract performance.

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Port Arthur Transit deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

Clean Water Requirements

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to ensure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

Clean Air Requirements

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to ensure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

Compliance with Federal Lobbying Policy

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Buy America

The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. A general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, software or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device that merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Bidder or Proposer must submit to the Agency the appropriate Buy America Certification with all offers on FTA-funded contracts, except those subject to a general waiver. Proposals that are not accompanied by a properly completed Buy America certification are subject to the provisions of 49 CFR 661.13 and may be rejected as nonresponsive.

FEDERAL CLAUSES ONLINE

Federally Required and Other Model Clauses

http://www.fta.dot.gov/12831_6195.html

Applicability of FTA Circular 4220.1F FAQ Search

http://www.fta.dot.gov/13057_12000.html

Appendix “A”

FEDERAL CONTRACT

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Bidders are strongly advised to read and adhere to all signature and contractual requirements. Requirements are specifically outlined within this Contract Agreement. Failure to comply with all requirements could result in the bid being rejected as non-responsive.

1. DRUG AND ALCOHOL TESTING

49 U.S.C. A5331

49 CFR Parts 653 and 654

Applicability to contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the City of Port Arthur or subrecipient is required to comply with 49 CFR 653 and 654, unless the contract is for maintenance services.

Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require the City of Port Arthur to ensure that any entity performing a safety-sensitive function on the City of Port Arthur's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the City of Port Arthur's compliance with the rules; thus, the City of Port Arthur is not in compliance with the rules unless every entity that performs a safety-sensitive function on the City of Port Arthur's behalf is in compliance with the rules. Third, the rules do not specify how a City of Port Arthur ensures that its subrecipients and/or contractors comply with them.

Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Texas, or the City of Port Arthur, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

2. FLY AMERICA REQUIREMENTS

49 USC § 40118

41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements – The Contractor agrees to comply with 49 USC § 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

3. BUY AMERICA REQUIREMENTS

49 USC § 5323(j)

49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR § 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 USC § 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR § 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 USC § 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 USC § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 USC § 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC § 5323(j)(1), but it may qualify for an exception pursuant to 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR § 661.7.

Date _____

Signature _____

Company Name _____

Title _____
 Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 USC § 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 USC § 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 USC § 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC § 5323(j)(2)(C), but may qualify for an exception pursuant to 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR § 661.7.

Date _____

Signature _____

Company Name _____

Title _____

4. CHARTER BUS REQUIREMENTS

49 USC § 5323(d)

49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

Charter Service Operations - The contractor agrees to comply with 49 USC § 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR § 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

5. SCHOOL BUS REQUIREMENTS

49 USC § 5323(F)

49 CFR Part 605

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 49 USC § 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

6. CARGO PREFERENCE REQUIREMENTS

46 USC § 1241

46 CFR Part 381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR § 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

7. SEISMIC SAFETY REQUIREMENTS

42 USC § 7701 et seq. 49

CFR Part 41

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

8. ENERGY CONSERVATION REQUIREMENTS

42 USC § 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

9. CLEAN WATER REQUIREMENTS

33 USC § 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC § 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

10. BUS TESTING

49 USC § 5323(c)

49 CFR Part 665

Applicability to Contracts

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 USC § A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA's BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 USC § A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

11. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 USC § 5323

49 CFR Part 663

Applicability to Contracts

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

- Clause and language therein are merely suggested. 49 CFR Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.
- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR § 663.13.
- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 CFR § 661.12, but has been modified to include FTA's Buy America requirements codified at 49 USC § A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 USC § 5323(l) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS

FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 USC § Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR § 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 USC § Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 USC § Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR § 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

12. LOBBYING

31 USC § 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/ Architectural and Engineering/ Acquisition of Rolling Stock/ Professional Service Contract/ Operational Service Contract/ Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 USC § 1352(b)(5) and 49 CFR Part 19, Appendix A, Section 7.

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, PL 104-65 [to be codified at 2 USC § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 USC § 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 USC § 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 [to be codified at 2 USC § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 USC § 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR Part 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (PL 104-65, to be codified at 2 USC § 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 USC § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC § A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

13. ACCESS TO RECORDS AND REPORTS

49 USC § 5325

18 CFR § 18.36 (i)

49 CFR § 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC § 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR § 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC § 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR § 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 USC § 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC § 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR § 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.
Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees	None	Those imposed on state pass thru to Contractor	None	None	None	None
a. Contracts below SAT (\$100,000)	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000/Capital Projects						
II Non State Grantees	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes ³		Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects						

Sources of Authority:

¹ 49 USC § 5325 (a)

² 49 CFR § 633.17

³ 18 CFR § 18.36 (i)

14. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

15. BONDING REQUIREMENTS

Applicability to Contracts -

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to

assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down

Bonding requirements flow down to the first tier contractors.

Model Clauses/Language

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to City of Port Arthur and listed as a company currently authorized under 31 CFR §, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by City of Port Arthur to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of City of Port Arthur.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of City of Port Arthur, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by City of Port Arthur provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense City of Port Arthur for the damages occasioned by default, then the undersigned bidder agrees to indemnify City of Port Arthur and pay over to City of Port Arthur the difference between the bid security and (Recipient's) total damages, so as to make City of Port Arthur whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the City of Port Arthur determines that a lesser amount would be adequate for the protection of the City of Port Arthur
2. The City of Port Arthur may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The City of Port Arthur may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the City of Port Arthur may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. City of Port Arthur property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the City of Port Arthur, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the City of Port Arthur determines that a lesser amount would be adequate for the protection of the City of Port Arthur
 2. The City of Port Arthur may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The City of Port Arthur may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- (d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The City of Port Arthur shall determine the amount of the advance payment bond necessary to protect the City of Port Arthur

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The City of Port Arthur shall determine the amount of the patent indemnity to protect the City of Port Arthur

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to City of Port Arthur, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by City of Port Arthur, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

1 The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by City of Port Arthur and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to City of Port Arthur As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to City of Port Arthur written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

16. CLEAN AIR

42 USC § 7401 et seq.

40 CFR § 15.61

49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts that exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC § 7401 et seq. . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

17. RECYCLED PRODUCTS

42 USC § 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996.

These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC § 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

18. DAVIS-BACON ACT

40 USC § 167; 276a -276a-5 (1995)

29 CFR § 5 (1995)

Applicability to Contract

Construction contracts over \$2,000.00

Flow Down

Applies to third party contractors and subcontractors

Model Clause/Language

(The language in this clause is mandated under the DOL regulations at 29 CFR § 5.5.)

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage

determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(iv)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and

wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The [insert name of grantee] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert name of grantee] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to

and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, which is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage

determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 USC § 327 -333 (1995)

29 CFR § 5 (1995)

29 CFR § 1926 (1995)

Applicability to Contracts

Section 102 of the Act, which deals with overtime requirements, applies to:

- all construction contracts in excess of \$2,000 and;
- all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

(The dollar threshold for this requirement is contained in the current regulation 29 CFR § 5.15.)

Section 107 of the Act that deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Flow Down

Applies to third party contractors and subcontractors.

Model Clauses/Language

Pursuant to Section 102 (Overtime):

(These clauses are specifically mandated under DOL regulation 29 CFR § 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For nonconstruction contracts, this is the only section required along with the payroll section.)

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee or recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 nonconstruction contracts should also have the following provision:)

(5) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 107 (OSHA):

(This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract t Work Hours and Safety Standards Act, 40 USC § section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii)Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

20. COPELAND ANTI-KICKBACK ACT

40 USC § 276c (1995)

29 CFR § 3 (1995)

29 CFR § 5 (1995)

Applicability to Contracts

All construction contracts in excess of \$2,000.

Flow Down

Applicable to all third party contractors and subcontractors.

Model Clauses/Language

3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at § 5.5(a)(5) of the Davis-Bacon model clauses and reads as follows:

Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract. Since there is no specific statutory or regulatory requirements for additional mandatory language, I would recommend that no additional clauses are necessary for this provision.

21. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 USC § 3801 et seq.

49 CFR Part 31 18 USC § 1001

49 USC § 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC § 3801 et seq. . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC § 5307, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

23. TERMINATION

49 USC Part 18

FTA Circular 4220.1D

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The City of Port Arthur may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to City of Port Arthur to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Port Arthur, the Contractor will account for the same, and dispose of it in the manner the City of Port Arthur directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Port Arthur may terminate this contract for default. Termination shall be effected by serving a notice of

termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City of Port Arthur that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City of Port Arthur, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The City of Port Arthur in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City of Port Arthur's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from City of Port Arthur setting forth the nature of said breach or default, City of Port Arthur shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City of Port Arthur from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that City of Port Arthur elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by City of Port Arthur shall not limit City of Port Arthur's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The City of Port Arthur, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Port Arthur may terminate this contract for default. The City of Port Arthur shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Port Arthur may terminate this contract for default. The City of Port Arthur shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the City of Port Arthur, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and City of Port Arthur shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Port Arthur

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City of Port Arthur may terminate this contract for default. The City of Port Arthur shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the City of Port Arthur in writing of the causes of delay. If in the judgment of the City of Port Arthur, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Port Arthur shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The City of Port Arthur may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Port Arthur shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) The City of Port Arthur may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Port Arthur or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Port Arthur, or property supplied to the Contractor by the City of Port Arthur. If the termination is for default, the City of Port Arthur may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Port Arthur and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City of Port Arthur, the Contractor shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the City of Port Arthur determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the City of Port Arthur, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

24. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

49 CFR Part 29

Executive Order 12549

Applicability to Contracts

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

Flow Down

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

Model Clause/Language

(Instructions) The certification and instruction language is contained at 29 CFR Part 29, Appendix B, and must be included in IFB's and RFP's [for inclusion by contractors in their bids or proposals] for all contracts over \$100,000, regardless of the type of contract to be awarded.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Lower Tier Covered Transactions (Third Party Contracts over \$100,000).

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below .
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, City of Port Arthur may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to City of Port Arthur if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact City of Port Arthur for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by City of Port Arthur

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, City of Port Arthur may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 CFR § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

25. PRIVACY ACT

5 USC § 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 USC § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

26. CIVIL RIGHTS REQUIREMENTS

29 USC § 623, 42 USC § 2000

42 USC § 6102, 42 USC § 12112

42 USC § 12132, 49 USC § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq. ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623 and Federal transit law at 49 USC § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

27. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18
FTA Circular 4220.1D

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City of Port Arthur's [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by City of Port Arthur, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Port Arthur and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Port Arthur is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Port Arthur, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure

to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

28. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 CFR Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirement applies to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data

to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - these following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

29. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 USC § 5310, § 5311, and § 5333
29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language. Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 USC § A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 USC § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 USC § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 USC § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 USC § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 USC § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 USC § 5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 USC § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 USC § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

30. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Applicability to Contracts

DEE provisions only apply to all DOT-assisted contracts. Disadvantaged Business Enterprise Provision

1. The Federal Fiscal Year goal has been set by City of Port Arthur in an attempt to match projected procurements with available qualified disadvantaged businesses. City of Port Arthur's goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by City of Port Arthur as set forth by the Department of Transportation Regulations 49 CFR Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any Contract Agreement resulting from this request for proposal.

If a specific DBE goal is assigned to this Contract Agreement, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, City of Port Arthur may declare the Contractor non-complaint end in breach of Contract Agreement. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this Contract Agreement.

(a) Policy - It is the policy of the Department of Transportation and City of Port Arthur that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract Agreement financed in whole or in part with federal funds under this Contract Agreement. Consequently, the DBE requirements of 49 CFR Part 26 and Section 106(c) of the STURAA of 1987, apply to this Contract Agreement.

The Contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Contract Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBE's have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in

the award and performance of subcontracts.

It is further the policy of City of Port Arthur to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of City of Port Arthur's procurement activities is encouraged.

(b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Contract Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the City of Port Arthur may declare the Contractor non-compliant and in breach of Contract Agreement.

(d) The Contractor will keep records and documents for a reasonable time following performance of this Contract Agreement to indicate compliance with City of Port Arthur's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of City of Port Arthur and will be submitted to City of Port Arthur upon request.

(e) City of Port Arthur will provide affirmative assistance as may be reasonable and necessary to assist the prime Contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies
- * Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the Contract Agreement:

(a) Disadvantaged business "means a small business concern":

- i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

or

- iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any

publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B -

This section is being developed to reflect the new rule in 49 CFR Part 26.

31. STATE AND LOCAL LAW DISCLAIMER

Applicability to Contracts

This disclaimer applies to all contracts.

Flow Down

The Disclaimer has unlimited flow down.

Model Clause/Language

FTA has developed the following language.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

32. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1D

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any

(name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.